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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,599	03/30/2005	Bernd Rumpf	502901-349PUS	1676

27799 7590 03/13/2009
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EXAMINER

WEINSTEIN, LEONARD J

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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03/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,599	Applicant(s) RUMPF, BERND	
	Examiner LEONARD J. WEINSTEIN	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2008 has been entered.

2. The examiner acknowledges the amendments to claims 1, 4-5, and 7-8.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Gabauer et al. US 2002/0152996. Gabauer teaches all the limitations as claimed for a feed unit for a fuel pump including: **[claim 1]** a baffle 14 having a first chamber 34 for collecting the fuel, a fuel pump 24 for sucking up the fuel, a fuel-pump suction opening 32 arranged in a vicinity of a bottom of the first chamber, as defined by elements 46 and 34, of the baffle 14, a bottom valve 45 arranged proximate the bottom of the first chamber (34, 46, 47), the bottom valve 45 permitting a flow of fuel into the first chamber (34, 46, 47) and preventing a flow of fuel out of the first chamber (34, 46, 47), and a

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second chamber, as defined by elements 17, 20, and 21, connected to the first chamber (34, 46, 47) via a throttle valve 52 wherein a volumetric flow of fuel that is restricted by the throttle valve 52 is smaller than the volumetric flow fed by the fuel pump 24; **[claim 2]** a second chamber (17, 20, 21) is manufactured integrally with the baffle 14; **[claim 4]** the throttle valve 52 is arranged in a wall 18 which is common to the first chamber (34, 46, 47) and the second chamber (17, 20, 21); **[claim 6]** a second chamber (17, 20, 21) is arranged within the baffle 14 and a common wall 18 between the first chamber (34, 46, 47) and the second chamber (17, 20, 21) is lower than an outer wall of the baffle 14; **[claim 7]** and a throttle valve 52 is configured as an opening (as defined by element 50) with a designated cross section.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flambert EP 0922603 (reference to numerals supported by machine translation included herewith and acquired from <http://epo.worldlingo.com/wl/epo/epo.html?SEED=EP0922603&SEEDFORMAT=E&ACTION=Description&OPS=ops.espacenet.com&LOCALE=enEP&T=1>) in view of Gabauer et al. US 2002/0152996. Flambert teaches all the limitations as claimed for a feed unit including: **[claim 1]** a baffle 14 having a first chamber 2 for collecting the fuel, a fuel pump 69 for sucking up the fuel, a fuel-pump

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suction opening 6 arranged in a vicinity of a bottom of the first chamber 2 of the baffle 14, a second chamber 4 connected to the first chamber 2 via a throttle valve 55 wherein a volumetric flow of fuel that is restricted by the throttle valve 55 is smaller than the volumetric flow fed by the fuel pump 69; **[claim 3]** and a first 2 and second chambers 4 are arranged at a same height (as both chambers have at least some portion of their bottom surface at the same height as a portion of the bottom surface of the other chamber).

Flamber teaches the limitations as discussed but fails to teach the following limitation that is taught by Gabauer for a feed unit including: **[claim 1]** a bottom valve 45 arranged proximate to the bottom of a first chamber (34, 46, 47), the bottom valve 45 permitting a flow of fuel into a first chamber (34, 46, 47) and preventing a flow of fuel out of the first chamber (34, 46, 47), and a second chamber, as defined by elements 17, 20, and 21, connected to the first chamber (34, 46, 47) via a throttle valve 52 wherein a volumetric flow of fuel that is restricted by the throttle valve 52 is smaller than the volumetric flow fed by the fuel pump 24. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a fuel pump with an auxiliary chamber for a reserved portion of fuel which is supplied to a pump when a main supply of fuel from the tank as become low, as taught by Flambert, with a valve assembly in the main chamber where a fuel pump is located and from which a primary supply of fuel supplied, with a float valve within a main chamber such that the only valve required on the bottom of a fuel pump assembly is that of the a valve connected to an auxiliary channel and providing the ability to place a fuel pump and fuel feeding unit a

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very small distance from the bottom of a fuel tank to provide the benefit wherein the pump can aspirate fuel at a very low pump head (Gabauer - ¶ 0003).

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flambert EP 0922603 in view of Gabauer US 2002/0152996 as applied to claim 1 above, and further in view of Walter. A combination of the references teaches all the limitations discussed but fails to teach the limitation of Walter for fuel pump with a first chamber 124 connected to a second chamber (as defined by the chamber within at least one or all of elements 125, 126, and 127) configured as an annular chamber which surrounds the first chamber 124. Flambert teaches a single square shape auxiliary chamber mounted onto a main chamber in a similar arrangement as that of elements 125, 126, and 127 of Walter taken separately. The prior art of Walter teaches the specific structure claimed for a chamber for a fuel pump. A modification to Flambert where in the shape of an auxiliary chamber was change to wrap around a circular main or primary chamber would require a change in shape and size or providing multiple auxiliary chambers having a partially annular shape as taught by Walter. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Further a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a secondary or auxiliary chamber in an annular shaped as taught by Walter, since the changes to considered to be modifications that are routine in the art.

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8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabauer et al. US 2002/0152996, as applied in section 4 above. Gabauer discloses the claimed invention including a valve throttling a volumetric flow which flows from a second chamber, except Gabauer does not disclose a volumetric flow in which a level is equalized in three to five minutes after a fuel pump has stopped. The time needed to equalize a level of fluid in a first and second chamber is a results effective variable with the results being a fluid level equalizing three to five minutes after a fuel pump has stopped. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a feed unit capable of equalizing a fluid level within two chambers of a fuel tank within 3 to 5 minutes after a pump has been stopped, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gabauer et al. US 2002/0152996, as applied in section 4 above. Gabauer discloses the general conditions of the claimed invention except for the express disclosure of a second chamber provided having a volume of approximately 10-20% of a baffle volume. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a second chamber comprising approximated 10-20% of a baffle volume, since the claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

10. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEONARD J. WEINSTEIN whose telephone number is (571)272-9961. The examiner can normally be reached on Monday - Thursday 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leonard J Weinstein/
Examiner, Art Unit 3746

/Devon C Kramer/
Supervisory Patent Examiner, Art Unit 3746